

Amendment # 1

This is an Amendment to the Contract entered into by and between All State Agencies/Pen Products (hereinafter referred to as "State") and Liqui-Box Corporation (hereinafter referred to as "Contractor") dated 9/22/04.

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

Excluded pages 4 through 22 included in Bid Package which were inadvertently omitted from the awarded contract and shall now be added to QPA 9713 by this amendment.

Total amount of this action is \$ NA. Total remuneration of this contract is not to exceed \$ NA.

All other matters previously agreed to and set forth in the original agreement and not affected by this Amendment shall remain in full force and effect.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:

(Where Applicable)

Signature: N/A

Printed Name: _____

Title: _____

Date: _____

Attested By: _____

State of Indiana Agency:

Signature: Katherine L. Harrington, CPPB

Printed Name: Katherine L. Harrington

Title: Senior Purchasing Administrator

Date: 10-27-04

Information Technology Oversight Commission

N/A

Laura J. Larimer
Executive Director

Date: _____

Department of Administration

Deena Deaton-Reese, CPPB

Charles R. Martindale
Commissioner

Date: 10/25/04

State Budget Agency

N/A

Marilyn F. Shultz
Director

Date: _____

Office of the Attorney General

N/A included in bid package

Stephen Carter
Attorney General

Date: _____

GENERAL TERMS AND SPECIFICATIONS

This is a request to establish a QPA for the acquisition of milk and juice packaging film for production of single ready-to-serve packages for distribution of products to all the Correctional Facilities in Indiana. The equipment needed to package milk and juices is to be provided in conjunction with the usage of this film, at no additional cost.

The estimate of material usage is based on the anticipated production of 6,000,000-8 ounce clear pouches and 14,000,000-8 ounce white pouches annually. Estimated material usage is 200 8 ounce pouches per pound of film. Estimated annual usage of film is 30,000 pounds of clear and 70,000 pounds of white. Subsequent annual usages may increase as new products are introduced. Minimum order quantities will be 20,000 pounds per delivery.

A: INSTALLATION/START-UP/TRAINING

1. Installation of new equipment will be completed while existing equipment remains in operation. Change over from old equipment to new equipment must be completed in time constraints that do not interfere with production quotas and will probably involve Saturday and Sunday work.
2. Bidder to provide up to ten (10) man days, for installation, start-up and operator/maintenance training. Prior to completion of this section, the system must be operating at specified operating speeds, proper failure rates, and meet or exceed the specified yields.
3. An additional one (1) man day of follow up service, training or equipment check to be scheduled at Food Industries discretion.
4. Bidder to be totally responsible for the performance of the film and equipment operation.

B: MAINTENANCE

1. All parts and labor are the responsibility of the vendor for the contract period.
2. A 48 hour Maximum response time on service calls, must be guaranteed by Bidder.
3. The Bidder is to guarantee a maximum of 48 hours delivery time for all repair/replacement parts for all bidder supplied equipment.
4. The Vendor will be responsible for all replacement/repair parts including high usage items such as horizontal D element, sealing wire, back up rubbers, sealing tape, etc. The recommended spare parts will be supplied to the customer at the beginning of this contract.
5. The customer will perform routine and emergency repairs as needed to keep equipment operational. Customer will be supplied, free of charge, all parts that the customer needs to perform these routine and emergency repairs between the scheduled service calls.
6. Emergency service calls will be at no charge to the customer
7. Vendor to maintain a 60 day supply of high usage items such as, but not limited to: horizontal D elements, sealing wires, back up rubbers, sealing tape, etc. at the customer location. Customer will reorder replacements as needed.

C: PERFORMANCE

1. Documentation is to be supplied, with the bid submission, attesting to the rejection rate which can be expected under normal operation on the provided High Speed Equipment. For example, 1 rejection per 2000 pouches produced giving a rejection rate of less than 0.05%. The rejection rate should be in that range or less.

D: REFERENCES

1. Each Bidder is to provide a listing of a minimum of three (3) like installations currently in operation using the Film and Equipment to package milk in individual pouches. Those listed users must be able to be contacted by Food Industry to verify claims made by bidder.

1) HOLLAND DAIRY, IN 3) ROCKVIEW DAIRY, CA.

2) PET PRODUCTS, NC

E: PATENT INFRINGEMENTS

1. There are Patents which apply to the production of pouches on vertical form, film and seal fillers. Bidder must certify that the Film being supplied will not in any way, result in infringements upon any patents of Prepac, Dupont, Timmonier or any other film or machinery manufacturer for the production of pouches on a vertical form, fill and seal filler. **BIDDER CERTIFIES THAT THE FILM SUPPLIED WILL NOT INFRINGE ON ANY KNOWN PATENTS.**

If the film is found to be in violation of any patents, the contractor will be responsible for all products, legal and financial costs which includes any loss of business and/or revenue associated with the patent claims.

BIDDER ACCEPTS SAME PATENT INDEMNITY FOR FILM AS FOR EQUIPMENT, WHICH IS SET OUT BY PEN IN PAGES 14 & 15, ARTICLES 4 & 5.

F: CERTIFICATION

1. Any required Federal and/or State certification or other documentation shall be included with each shipment. Shipments received by PEN/CIF Food Industry which do not include required Federal and/or State certification or other documentation will be rejected and will be returned to the contractor at his expense.
2. Both the single-wound sheeting film and the plastic over-wrap used for each roll must comply with Section 177.1520 "Olefin Polymers", of the U.S. Food and Drug Administration (USDA), Title 21, Code of Federal Regulations.

NOTE: This material will form pouches, which will be filled with milk or juice. Therefore, the material must be supplied by a manufacturer who is currently I.M.S. certified under single-service containers and related products.

3. A copy of the manufacturers certification (FDA Form 2359-D) must be submitted with the bid or the bid will be deemed non-responsive and no further consideration for award will be given

Attached.

4. Film must be certified and approved for Dairy Use by the FDA and I.M.S. for making pouches to contain Milk as follows:

- a. All film supplied for the pouch packaging of milk and dairy products must comply with sections 175 through 178 of the United States Food and Drug Administration Title 21 Code of Federal Regulations, as it is in effect on the date of this bid award.
- b. All film produced for dairies for the packaging of single-service containers and related products for milk and dairy products must be produced by a manufacturing plant that is currently certified and listed under the Interstate Milk Shippers (I.M.S.) list for sanitation compliance and enforcement ratings of I.M.S., as outlined by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.
- c. BOTH FEDERAL AND STATE AGENCIES ADMINISTER THESE REGULATIONS.

G: TITLE

- 1. Title of all equipment to remain with the bidder.

BID SHEET

YIELD: 200 8 ounce pouches per pound, filmNOMINAL REJECTION RATE 1 rejects per 2000 pouches 0.05%

EQUIPMENT TO BE PROVIDED:

- PREPACK 15-7M POUCH FILLER.
- 2 MARKEM 9880 CODERS.
- MINI SIP SEMI AUTOMATIC CASE PACKER.
- MODEL NUMBER: MCP-240
- THE ABOVE EQUIPMENT MEETS OR EXCEEDS ALL SPECIFICATIONS FOR THE LIQUID POUCH PACKAGING SYSTEM.

EXCEPTIONS TO BID SPECIFICATIONS:

- ① BIDDING ALL OR NONE.
- ② PRICE OF FILM QUOTED IS FOR UNPRINTED FILM.
- ③ PHOTO EYES ARE ONLY REQUIRED FOR REGISTERED PRINT FILM. PHOTO EYES ARE NOT REQUIRED WITH THE UNPRINTED FILM THAT PEN RUNS.
- ④ WE WILL INCLUDE (1) ONE SERVICE CALL PER QUARTER AND UP TO ONE (1) "EMERGENCY" CALL PER HALF, FOR THE LENGTH OF THE AGREEMENT. THIS IS INCLUDED IN THE COST OF THE FILM.
- ⑤ WE WILL ALSO SUPPLY UP TO \$8000 IN PART/CONSUMABLES PER HALF, FOR THE LENGTH OF THE AGREEMENT, WITH NO CHARGE TO PEN. WE WILL MUTUALLY AGREE UPON WHICH PARTS ARE TO BE SUPPLIED.
- ⑥ THIS BID INCLUDES A FILLER & PACKER THAT IS ALREADY LOCATED AT PEN. IF WE ARE AWARDED THIS BID WE WILL REPLACE AGREED UPON PARTS ON THE FILLER, UP TO \$10,000, TO PUT THE FILLER IN FULL WORKING ORDER. WE WILL ALSO COVER THE TRANSPORTATION COSTS FOR OUR MACHINE SERVICE TECHNICIAN TO INSTALL THESE PARTS ON THE MACHINE.

NOTE: Upon Bid acceptance the successful bidder must supply a listing and layout of utilities needed for the installation of the bid equipment.

The State of Indiana is requiring all vendors, who respond to State solicitations such as Invitation to Bid (ITB), Request for Quotation (RFQ), or Request For Proposal (RFP) for catalog Quantity Purchase Agreement (QPA) commodities and/or who are awarded a contract including catalog commodities, follow the eProcurement guidelines identified below. Failure to agree to these guidelines in your solicitation response or failure to comply with these guidelines once awarded a contract/PO may result in vendors being found non-responsive and...

eProcurement Guidelines

1. Register as a valid bidder for the State of Indiana (SOI)
2. Basic commitment and level of effort in supporting:
 - Attend supplier summit meeting to identify State of Indiana catalog requirements
 - Catalog development (Internal Catalogs)
 - a. Include only items identified on QPA contract
 - b. Include only established prices identified on QPA contract
 - Catalog development (PunchOut) if vendor supports cXML standards
 - Supports the specific data elements outlined by the SOI
 - a. MBE/WBE
 - b. Recycled Content
 - c. US Manufacture
 - d. Alternative Fuel Vehicle
 - e. Case Pack
 - f. Action
 - g. Effective Date (of the item)
 - h. Supplier's Name
 - i. Supplier's ID #
 - j. Product Description (Short)
 - k. Product Description (Long)
 - l. Supplier Part #
 - m. Supplier Part # Extension
 - n. UOM
 - o. List Unit Price
 - p. Minimum Quantity
 - q. Effective Date (of the price)
 - r. Manufacturer Name
 - s. Manufacturer Part #
 - t. UNSPSC Segment Description
 - u. UNSPSC Family Description
 - v. UNSPSC Class Description
 - w. UNSPSC Commodity Description
 - x. UNSPSC Code
 - y. ETA (Lead Time)
 - z. Currency Code
 - aa. Expiration Date
 - bb. Image FileName or URL
 - cc. Type of Image
 - Catalog maintenance and transaction capabilities
3. Adhere to UN/SPSC mapping requirements. UN/SPSC information can be found at the following website.
<http://www.un-spssc.org>
4. Adhere to UN or ANSI X.12 standard UOM's. UOM information can be found at the following website.
<http://www.unece.org/cefact/index.htm>

TERMS AND CONDITIONS

1. **ACKNOWLEDGMENT:** This solicitation/award contains the complete and final agreement between State and Vendor and no other agreement in any way modifying any of said terms and conditions will be binding upon State or Vendor unless made in writing and signed by State's and Vendor's authorized representative.
2. **PRICING:** Unit price must be entered and extended, and the total price of the solicitation must be shown. Unit prices are to be quoted/fold on the basis of the unit specified. A binding contract will be created, if the solicitation is accepted, by the issuance of a purchase order at any time within the period so given. Each bidder should carefully check his/her solicitation before submitting it to the Procurement Division of the Department of Administration. If there is an error between the unit price and total price, the unit price shall prevail. Awarded Prices: Prices listed for each item are firm and cannot be changed. Any revision in price may be rejected at the discretion of the IN Dept. of Administration, Contract Administration Director and may result in cancellation of the Purchase Order without recourse on the part of the awarded vendor.
3. **TERMINATION FOR CONVENIENCE:** This contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State of Indiana. Termination of services shall be affected by delivery to the contractor of a Termination Notice at least thirty (30) days prior to termination effective date, specifying the extent to which performance of services under which such termination becomes effective. The contractor shall be compensated for services rendered prior to the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to contractor exceed the original contract price due on contract or any price increase be allowed on individual line items if canceled only in part prior to the original termination date.
4. **INSURANCE:** If this agreement provides for work to be performed by the Vendor on property owned or controlled by the State of Indiana, or on property of others named herein, Vendor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees. Upon request, Vendor shall furnish a written certificate of insurance specifying the name of the insurer and the policy and expiration date.
5. **F.O.B. DESTINATION:** The State of Indiana prefers solicitations to be submitted on a delivered basis; therefore all solicitations will be considered to be made on the basis of all shipping charges prepaid and allowed. If transportation charges are NOT allowed, the bidder must so state and show such charges in his/her solicitation. The shipment must be prepaid and transportation charges added to the invoice. The State of Indiana will pay for such transportation charges only on the basis of the lower price, whether it is the one shown in the solicitation or the charges shown on the prepaid freight bill. THE STATE OF INDIANA DOES NOT HAVE FACILITIES FOR COLLECT SHIPMENTS; THEREFORE, COLLECT SHIPMENTS WILL NOT BE ACCEPTED.

6. **TITLE:** Title to all drawings, blueprints, dies, patterns, tools and all other property prepared or constructed by Vendor at Vendor's plant or elsewhere or ordered for use in connection with the order to the extent that the State of Indiana has made payment, therefore, or has furnished to Vendor at no charge, shall vest in and be the property of the State of Indiana and shall be identified as such; and Vendor assumes all liability for loss or failure to deliver such property to the State of Indiana.
7. **DELIVERY:** Vendors are warned the agency receiving delivery is not alone authorized to modify the contract terms. Delivery must be made at time agreed upon. If any indicated or actual delays arise, the agency designated to receive the merchandise must be notified immediately and the cause for such delay stated. If any goods are not delivered within the time specified on any purchase order, or within a reasonable time not exceeding 30 days after receipt of a purchase order if no time is specified, the agency may refuse to accept such goods, and the Department of Administration, Procurement Division, may cancel this agreement. Each package shall be numbered and labeled with the State of Indiana's purchase order number, contents, weight, and shall contain an itemized packing slip and be properly packed for shipment. The Vendor shall make no deliveries on verbal orders except from the Using Agency on purchases less than \$5,000 and only with written approval on purchases greater than \$5,000 from the Indiana Department of Administration Procurement Division.
8. **OPEN COMPETITION:** The specifications contained herein are intended to be nonrestrictive. Although at times brand names and model numbers may be used, they are merely intended to be guidelines to establish criteria and quality for competitive bidding. Alternate quotes/bids will be evaluated and may be acceptable as long as they can be verified as equal or better than specified as determined by the Indiana Department of Administration and the Using Agency. All offers bidding alternate products are requested to submit detailed specifications with their solicitation. Any Specifications, drawings, notes, instructions, engineering notices or technical data referred to in the Solicitation/Purchase Order shall be deemed to be incorporated herein by reference as if fully set forth.
9. **QUANTITY:** Goods shipped in excess of quantity designated in Purchase Order may be returned at the Vendor's expense.
10. **QUALITY:** Vendor warrants all materials and/or services delivered hereunder to be free from defect of material or workmanship, and to conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance, or payment by the State of Indiana of the material or service.
11. **INSPECTION:** All material, workmanship, or services entering into the performance of this Order shall be subject to State's (or designated representative's) inspection and test at all times before, during, or after manufacture. Vendor shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspections. Final inspection and acceptance shall be on State's premises unless otherwise specified. The State of Indiana shall have the right to reject and return at Vendor's expense, or to require at Vendor's expense, the correction or replacement of materials, workmanship, or services which are defective or do not conform to the requirements of this Order. All rejects shall be held at transportation and handling costs until returned to Vendor or corrected by Vendor.
12. **Nondiscrimination:** Pursuant to IC 22-9-1-10 and Civil Rights Act of 1964, Contractor and its Agents, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to his hire, tenure, terms conditions or privileges of employment or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, ancestry or status as a veteran. The contractor understands that the State is a recipient of federal funds. Pursuant to that understanding the contractor, and its subcontractor, if any, agree that if the contractor employs 50 or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. Breach of this covenant may be regarded as a material breach of contract. The State of Indiana shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference.
13. **TAXES:** Prices listed on an invoice submitted by Vendor for payment is not to include any tax for which the State is exempt. The State of Indiana will furnish an exemption certificate for tax for which the State is exempted if such is required. The State will not be responsible for any taxes levied on the Vendor as a result of this agreement.
14. **CONTAINERS AND PACKING:** The State of Indiana will not advance the cost of drums, carboys, cylinders, barrels, bags, or other such returnable containers which, in the custom of the trade, are considered as the property of the Vendor, except under the following conditions: charges for such containers are to be covered by memo invoice, the State guarantees to return such containers when empty, and transportation charges are collected to destination specified by the Vendor. If the State fails to return containers within a reasonable time, it guarantees to pay for them. The bid must clearly state Vendor's compliance with the foregoing conditions and the charges applying to containers. No charge will be allowed for packing, crating, or cartage, unless specified by the Vendor in his/her solicitation.
15. **PATENTS:** The vendor agrees to defend, at its own expense, the State of Indiana and the Using Agency and to hold it harmless with respect to any claims that the equipment furnished by the Vendor under this agreement infringes or allegedly infringes any patents of the United States and with respect to any and all suits, controversies, demands, and liabilities arising out of such claim; provided that the foregoing shall not apply to infringement resulting from Vendor's use of a patented invention required to comply with the written instructions of the State, if such patented invention is not normally utilized by the Vendor, and provided that the State:
- Gives the Vendor a prompt written notice of any claim; and
 - Allows the Vendor to control and fully cooperates with the Vendor in the defense and all related settlement negotiations.
16. **CONTINGENCIES:** Neither party hereto shall be liable to the other for default or delay in delivering or accepting goods hereunder if caused by fire, strike, riot, war, act of God, delay of carriers, governmental order or regulation, complete or partial shut down of plant by reason of inability to obtain sufficient raw materials or power, and/or any other similar or different contingency beyond the reasonable control of the respective parties. This solicitation/award may be canceled by the State of Indiana without liability in the event of a petition in bankruptcy being filed by or against the Vendor, or in the event of the appointment of any receiver.
17. **FORCE MAJEURE:** In the event that either party is unable to perform any of its obligations under this contract - or to enjoy any of its benefits - because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.
18. **COMPLIANCE WITH LAWS:** The Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this agreement shall be reviewed by the State of Indiana and the Contractor to determine whether the provisions of the contract require formal amendment.
19. **GOVERNING LAWS:** This contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
20. **PAYMENTS:** All payment obligations are subject to the encumbrance of monies and shall be made in arrears in accordance with Indiana law, IC 5-17-5-1, and state fiscal policies and procedures and in this regard the Contractor agrees to execute such State payment (invoice) forms not inconsistent herewith.
21. **WARRANTY:** The Seller will furnish all parts and maintenance at no charge for a period of at least 90 days or the manufacturers standard warranty, whichever is longer, beginning on the first day after acceptance by the agency provided that such maintenance and parts are not required because of accident, neglect, misuse, failure of electrical power or air-conditioning, humidity control, or causes other than ordinary use. Any such service required as a result of erroneous site preparation specifications furnished by the Seller or otherwise required due to the fault or negligence of the Seller, shall also be provided by the Seller at no additional charge. All replaced parts shall become the property of the Seller. Prior to the expiration of the warranty period, whenever equipment is shipped for a mechanical replacement purpose, the Seller, shall bear all cost of such shipment including, but not limited to cost of packing, transportation, rigging drayage, and insurance. The warranty shall apply to the replacement machine beginning on the first day following delivery of the replacement machine to the using agency.
22. **INFORMATION TECHNOLOGY ACCESSIBILITY:** The Contractor acknowledges and agrees that all hardware, software and services provided to or purchased by the State must be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 749d), as amended.

SF47875(ELEC-4-00)

CERTIFICATION PAGE

CERTIFICATION AS A SMALL BUSINESS

PLEASE CHECK IF APPLICABLE.

This is to certify that the Bidder is qualified as a Small Business concern under the size standards of this solicitation. Providing false information will be subject to the sanctions found in IC 4-13-1-21 and IC 35-43-5-11. The Bidder should be registered with the Procurement Division as a Small Business concern with a defined area of qualification.

- (1) _____ Wholesale business with annual sales of four million dollars (\$4,000,000) or less during its last fiscal year.
- (2) _____ Service business with average sales of five hundred thousand dollars (\$500,000) or less for the current and preceding three (3) fiscal years and which employs no more than twenty-five (25) persons.

- (3) _____ Retail business or business selling services with annual sales and receipts of five hundred thousand dollars (\$500,000) or less.
- (4) _____ Manufacturing business which employs no more than one hundred (100) persons.

SECRETARY OF STATE APPROVAL FOR OUT-OF-STATE BIDDERS

☒ PLEASE CHECK IF APPLICABLE.

This is to certify that the information provided in the notice to out-of-state corporation bidders is a full and true account of this corporation's standing with the Indiana Secretary of State's office on the due date of this request, in accordance with Indiana Code, Section 5-22-16-4.

RECYCLED PREFERENCE

PLEASE CHECK IF APPLICABLE.

This is to certify that the bidder's representations of the Recycled Content preference within this package are true to the best of my knowledge.

INDIANA SMALL BUSINESS PREFERENCE

PLEASE CHECK IF APPLICABLE.

This is to certify that the bidder's representations of the Indiana Small Business preference within this package are true to the best of my knowledge.

SUSPENSION

☒ PLEASE CHECK IF APPLICABLE.

This is to certify that I am not currently suspended or debarred from conducting business with any other governmental entity.

- Please note that the maximum aggregate price preference available to any vendor is 15%.

THE COMPLETION OF THE SECTION BELOW IS MANDATORY!
MINORITY BUSINESS DEVELOPMENT

☒ PLEASE CHECK IF COMPLETED (MANDATORY).

Pursuant to IC 4-13-16.5 and 25 IAC 5, the contract goal for this solicitation is 4 % for Minority Business Enterprise participation and 4 % for Woman Business Enterprise participation. It is the intent of IDOA Procurement Division to meet or exceed the above mentioned M/WBE goals. Completion of the Minority and Woman Business Participation Plan in this solicitation is **MANDATORY!** Failure to provide the minority/woman business participation plan at the time of solicitation submission may result in the disqualification and rejection of the solicitation submission. Please note that IDOA reserves the right to verify all information included on minority/woman business enterprise participation plans before making final determinations of the bidder's responsiveness and responsibility. *PLEASE SEE ATTACHMENTS. WE APPLY DOLLARS INDIRECTLY & NOT FOR SPECIFIC BIDS. WE FILE ANNUAL REPORTS WITH THE GOVERNMENT.* Participation does not need to be only through subcontractors, but can also be through second-tier participation with common suppliers (office supplies, courier services, accounting services, janitorial services, etc.). Include only the proportion of those contracts, which pertains to the bid being submitted.

In the event the bidder has demonstrated a good faith effort to meet or exceed the goal, and has worked with the IDOA Minority and Women's Business Enterprises Division to design a plan in an acceptable time period, and is still unable to produce an acceptable participation plan before the opening date of the solicitation, then that Vendor may submit an application for program waiver with the documentation of their good faith effort. The State reserves the right to accept, to verify, or to deny any application for waiver from the participation goal.

By submission of the bid package, the bidder thereby acknowledges and agrees to be bound by the regulatory processes involving the State of Indiana's minority and women's business enterprise program (25 IAC 5). Questions involving the regulations governing the minority and women's business enterprise participation plan and/or the application for relief from the participation goal should be directed to the IDOA Minority and Women's Business Enterprise Division office at (317) 233-6607.

PAYMENT BY CREDIT CARD

The State of Indiana is currently exploring the utilization of a procurement credit card as another means for payment of supplies/services ordered. Respondents are requested to indicate (by placing a check mark at the beginning of one of the below paragraphs) whether they will accept the credit card as a method of payment when used by the ordering agencies. This method of payment is currently not available, but should be available sometime during the term of this contract.

- Definitions. "Procurement credit card" means the uniquely numbered credit card issued by a Commercial Credit Contractor, to a designated individual State employee to pay for official State purchases. "Oral delivery order" means an order placed orally either in person or by telephone or via on-line ordering.
- At the option of the State and if agreeable to the vendor(s), payments of \$25,000 or less may be made using the State's procurement credit card.
- The vendor(s) shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a card.

accordance with other contract requirements, the vendor(s) shall immediately credit a cardholder's account for items returned as defective or faulty.

- (1) ☐ I will accept the procurement credit card, and offer the following discount for all orders placed using the credit card: _____ %
- (2) ☐ I will accept the procurement credit card, but elect not to offer any discount for orders placed using the credit card.
- (3) ☒ I elect not to accept the procurement credit card for payment of supplies issued against the schedule contract.

(NOTE: Discounts offered in connection with the credit card will not be used in the evaluation of the offer.)

ELECTRONIC PROCUREMENT (E-PROCUREMENT)

The State of Indiana is currently in the planning stages of implementing an e-procurement system. This purchasing method is not yet available, but could play an important role in the State's purchasing activities in the future. Respondents are requested to respond "yes" or "no" to the statements below.

Responses to this survey are for informational purposes only and will not be considered in the evaluation of this solicitation.

- (a) **Definition:** E-Procurement will be an Internet based system allowing State of Indiana agencies to place orders electronically from established electronic catalogs resulting from a conventional procurement method.
- (b) **Purpose:** To expedite the process of placing orders and receiving goods and services, while reducing the administrative costs associated with current conventional purchasing methods and policies.
- (c) **Benefits:** Participating vendors realize increased sales due to an Internet based system, as entities other than State of Indiana agencies may purchase from the established catalogs if agreeable to the vendor. Due to the electronic placement of orders, mistakes in ordering and paperwork is greatly reduced, while accelerating the payment process associated with conventional purchasing methods.
- (d) **Transaction Fees:** A nominal per transaction fee may be associated with an E-Procurement system.
- Yes ☒ No ☐ My company is interested in the benefits an Internet based E-Procurement system may have to offer.
- Yes ☐ No ☒ My company currently maintains an electronic catalog.
- Yes ☒ No ☐ My company would be interested in participating in E-Procurement if the means to create and maintain an electronic catalog are available.

RECYCLED PREFERENCE (IC 5-22-15-16 & 17)

A Recycled Preference of fifteen percent (15%) may be applied for evaluation purposes, unless stated otherwise in the specifications. The amount of recycled content required for product requested in this solicitation is listed in the specifications. If the required recycled content is not listed in the specifications, then the item must contain recycled content of at least twenty percent (20%) in order for the vendor to claim the recycled preference.

The amount of the offer will be multiplied by the amount of the preference amount claimed (usually 15%). This calculated amount is then deducted from the original offer to determine the evaluation amount to consider. The preference is for evaluation only and is not a discount. The Procurement Director or designee will utilize the adjusted price as determined in the above explanation in determining the overall lowest responsible bidder or offeror. The contract award will be made to the lowest responsible, responsive offeror whose total adjusted offer is the lowest meeting all specifications. The amount originally offered will be the amount of the award.

A manufacturer's certification must be submitted for each item or group of items for which you seek a preference or your preference may not be considered.

Do you plan to claim the Recycled Content Preference of fifteen (15%) percent?

YES _____

NO ☒ _____

THE FOLLOWING PORTION SHOULD BE COMPLETED EVEN IF NO PREFERENCE IS BEING CLAIMED:

EVEN IF YOU ARE UNABLE TO CLAIM A PREFERENCE, BUT ARE BIDDING A RECYCLED PRODUCT (S), PLEASE LISTE THE PERCENTAGE OF CONTENT.

ITEM (S)	% RECYCLED RECOVERED MATERIALS	% POST CONSUMER RECOVERED MATERIALS

IF THERE IS MORE THAN ONE LINE ITEM THAT IS RECYCLED, THE CONTENT MUST BE LISTED FOR EACH.

SECRETARY OF STATE APPROVAL

Indiana Code 5-22-16-4 requires that all foreign (out-of-state) corporations must be registered with the Indiana Secretary of State in order to do business with the State of Indiana. This requirement applies only to out-of-state corporations and not to any other business entity.

Failure to register with the Secretary of State's office may result in a determination of your corporation as non-responsible and contracts awarded to your corporation may be canceled.

All out-of-state corporations should complete the following section or your request may be considered non-responsive. This requirement to register is based on Indiana government procurement law, not corporation's law. It is applicable to all corporations regardless of their size, number of shareholders, Sub-chapter S status or whether the corporation is doing business in Indiana.

This corporation is currently registered with the Secretary of State (check one). Failure to provide true information may affect your future ability to do business with the State of Indiana.

YES ☒ Provide Date of Registration 11/29/1989

NO _____ Provide Date of Application _____

Information concerning registration with the Secretary of State may be obtained by contacting:

Indiana Secretary of State
Corporation Section
302 W. Washington St. Rm. E018
Indianapolis, Indiana 46204
(317) 232-6576

INDIANA SMALL BUSINESS PREFERENCE
(IC 5-22-15-23)

An Indiana Small Business Preference of fifteen percent (15%) may be applied for evaluation purposes.

The amount of the bid will be multiplied by the amount of the preference amount claimed (15%). This calculated amount will then be deducted from the original offer to determine the evaluation amount to consider. The preference is for evaluation only and is not a discount. The Procurement Director or designee will utilize the adjusted price as determined in the above explanation in determining the overall lowest responsible bidder or offeror. The contract award will be made to the lowest responsible, responsive offeror whose total adjusted offer is the lowest meeting all specifications. The amount originally offered will be the amount of the award.

You must meet the following criteria to claim the fifteen percent (15%) Indiana Small Business Preference.

- The business must be located in the State of Indiana. The IDOA Procurement Division defines an "Indiana" business as a business that meets one of the following criteria: 1) The principal office is located in the state of Indiana AND the company is registered with the Indiana Secretary of State as an Indiana corporation OR 2) 51% or more of the company's value is the result of business activity in the state of Indiana.
- The bidder must qualify as a Small Business concern under the size standards of this solicitation. The Bidder should be registered with the Procurement Division as a Small Business concern with a defined area qualification. Providing false information will be subject to the sanctions found in IC 4-13-1-21 and IC 35-43-5-11.

You must meet at least one of the following to claim the fifteen-percent (15%) Indiana Small Business Preference (IC 5-22-14-3). (Please circle the number which applies to your business.)

- 1) Wholesale business with annual sales of four million dollars (\$4,000,000) or less during its last fiscal year. "Wholesale business" means a business that derives its principal source of income (over 50 percent of gross revenues) from sales to retailers, other merchants, or industrial, institutional or commercial users who will use the goods for resale or business use. This definition includes distribution activities.
- 2) Service business with average sales of five hundred thousand dollars (\$500,000) or less for the current and preceding three (3) fiscal years and which employs no more than twenty-five (25) persons. "Service business" means a business that derives its principal source of income (over 50 percent of gross revenues) from the sale of useful artistic, educational, intellectual, literary, or scientific labor from which no necessary tangible commodity is derived.
- 3) Retail business or business selling services with annual sales and receipts of five hundred thousand dollars (\$500,000) or less. "Retail business" means a business that derives its principal source of income (over 50 percent of gross revenues) from the sale of supplies to the ultimate consumer.
- 4) Manufacturing business, which employs no more than one hundred (100) persons. "Manufacturing business" means a business that derives its principal source of income (over 50 percent of gross revenues) from the sale of goods the firm produces at its own facility made from raw, unfinished materials, as distinguished from the final product.

* Please note that the Procurement Division may require documentation to support your claim of operating as a small business.

Are you an Indiana Small Business and plan to claim a fifteen percent (15%) preference as a result?

YES _____ NO ✓

SF47875 (ELEC 7-99)

U.S. MANUFACTURED PRODUCT PREFERENCE CERTIFICATION

This is to certify under penalties of perjury that each of the bidder's end products, except those listed below, are a U.S. Manufactured Product as stated in IC 5-22-15-21. A product is manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. (In determining if a product is manufactured in the United States, only the product and its components shall be considered.) For further information please reference the Vendor Handbook located at <http://www.state.in.us/idoa>

PLEASE CHECK ONE OF THE FOLLOWING:

☐ U.S. Manufactured Product Preference applies:

☒ U.S. Manufactured Product Preference **DOES NOT** apply to the following product(s).

	<u>Product(s)</u>	<u>Country of origin</u>
MACHINE:	PREPACK 15-7M	FRANCE
FILM:	SM3	CANADA/U.S.

NOTE:-RESIN COMES FROM CANADA OR THE U.S.
 -RESIN SUPPLIER DETERMINES SOURCE OF SUPPLY.
 -CURRENTLY 20% OF THE FORMULA IS ONLY SUPPLIED BY THE U.S. THE REMAINING 80% IS SOURCED FROM CANADA.

TERMS AND CONDITIONS THAT APPLY TO ALL TERM AGREEMENTS REGARDLESS OF THE TYPE

1. **Payments:** All payment obligations are subject to the encumbrance of monies and shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures and in this regard the Lessor/Contractor agrees to execute such State payment (invoice) forms not inconsistent herewith.
2. **Term:** The term of this agreement shall be for that period shown in solicitation package, except where the Using Agency agrees to a later beginning date for the same term and notifies the Indiana Department of Administration in writing of a different commencement and termination date.
3. **Taxes:** The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Lessor/Contractor as a result of this agreement.
4. **Patents:** The Lessor/Contractor agrees to defend, at its own expense, the State of Indiana and the Using Agency and to hold it harmless with respect to any claims that the equipment furnished by the Lessor/Contractor under this agreement infringes or allegedly infringes any patents of the United States and with respect to any and all suits, controversies, demands, and liabilities arising out of such claim; provided that the foregoing shall not apply to infringement resulting from Lessor/Contractor's use of a patented invention required to comply with the written instructions of the State, if such patented invention is not normally utilized by the Lessor/Contractor, and provided that the State:
 - A. Gives the Lessor/Contractor a prompt written notice of any claim; and
 - B. Allows the Lessor/Contractor to control and fully cooperates with the Lessor/Contractor in the defense and all related settlement negotiations.
5. **Obligation:** Lessor/Contractor's obligation under the Patents Section is further conditioned on the State's agreement that if the operation of the equipment becomes or, in the Lessor/Contractor's opinion, is likely to become the subject of such a claim, the State will permit Lessor/Contractor, at its option and expense, either to procure the right for the State to continue using the equipment or to replace or modify it so that it becomes non-infringing. However, if neither of the foregoing alternatives is reasonably available, the State will return the equipment upon written request by the Lessor/Contractor. The Lessor/Contractor agrees to grant the State credit for returned equipment as depreciated. The depreciation shall be an equal amount per year over the life of the equipment established by mutual agreement of the State of Indiana and the Lessor/Contractor.
6. **Default:**
 - A. If the Using Agency, after sixty (60) days written notice, fails to correct or cure any breach of this agreement, then the Lessor/Contractor may cancel and terminate this Agreement and collect all monies due up to and including the date of termination.
 - B. If the Lessor/Contractor, after sixty (60) days written notice, fails to correct or cure any breach of this agreement, the Using Agency may cancel and terminate this Agreement and thereafter owe no further monies for equipment usage beyond the termination date.
7. **Funding Cancellation Clause:** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this contract, the contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
8. **Termination For Convenience:** This contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to the contractor of a Termination Notice at least thirty (30) days prior to termination effective date, specifying the extent to which performance of services under which such termination becomes effective. The Lessor/Contractor shall be compensated for services rendered prior to the effective date of termination. The Lessor/Contractor shall be compensated for services herein provided but in no case shall total payment made to contractor exceed the original contract price due on contract or any price increase be allowed on individual line items if canceled only in part prior to the original termination date.
9. **Assignment:** The Lessor/Contractor shall not assign or subcontract the whole or any part of this contract without the State's prior written consent. The Lessor/Contractor may assign its right to receive payments to such third parties as the Lessor/Contractor may desire without the prior written consent of the State, provided that Lessor/Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this contract and shall not be made to more than one party.
10. **Nondiscrimination:** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

If federal funding is involved with the contract, The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.
11. **Alterations and Attachments:** An alteration or attachment to equipment may be made only upon approval by the Lessor/Contractor, which approval shall not be unreasonably withheld. The State agrees to remove any alteration or attachment and to restore equipment to its normal, unaltered condition, ordinary wear and tear excepted, prior to its return to Lessor/Contractor, or upon notice from Lessor/Contractor that the alteration or attachment creates a safety hazard or renders maintenance of the equipment impractical.
12. **Authority to Bind Lessor/Contractor:** Notwithstanding anything in the contract to the contrary, the signatory for the Lessor/Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Lessor/Contractor designated in the solicitation package and has obtained all necessary or applicable approval from the home office of the Lessor/Contractor to make this contract fully binding upon the Lessor/Contractor when his/her signature is affixed and is not subject to home office acceptance hereto and accepted by the State of Indiana.
13. **Independent Lessor/Contractor:** Both parties hereto, in the performance of this contract, will be acting in an individual capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons or any damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of the other party.

interest, liquidated damages, or attorney's fees except as expressly required by Indiana Law including, but not limited to, IC 34-54-8-5 et seq.; IC 34-13-1-6 et seq.; and IC 5-17-5-1 et seq.

15. Waiver of Rights: No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.
16. Compliance with Laws: The Lessor/Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this agreement shall be reviewed by the State of Indiana and the Lessor/Contractor to determine whether the provisions of the contract require formal amendment.
17. Hold Harmless/Indemnification: The Lessor/Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officers, and employees from all claims and suits, including court costs, attorney's fees, and other expenses, caused by any act or omission of the Lessor/Contractor and/or its subcontractors, if any. The State shall not provide such indemnification to the Lessor/ Contractor.

1. Maintaining a Drug-Free Workplace:

The Lessor/Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Lessor/Contractor will give written notice to the State within ten (10) days after receiving actual notice that an employee has been convicted of a criminal drug violation occurring in subcontractor's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the Lessor/Contractor for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Agreement is in excess of \$25,000.00, Lessor/Contractor hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Lessor/ Contractor and made a part of the contract or agreement as part of the contract documents.

The Lessor/Contractor certifies and agrees that it will provide a drug-free workplace policy by:

- A. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Lessor/Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) the Lessor/Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- C. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Lessor/ Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (c)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

19. General: This contract embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein or by a written agreement signed by all authorized and required parties. The terms, conditions, and specifications of the original solicitation, if any, and/or any award made in connection with this transaction are incorporated herein by reference and made a part hereof just as if they have been fully set out herein.

20. **Open Competition:** The specifications contained herein are intended to be nonrestrictive. Although at times brand names and model numbers may be used, they are merely intended to be guidelines to establish criteria and quality for competitive bidding. Alternate bids will be evaluated and may be acceptable as long as they can be verified as equal or better than specified as determined by the Indiana Department of Administration and the Using Agency. All offerors bidding alternate products are requested to submit detailed specifications with their quote/bid.
21. **Delivery:** Delivery must be made at the time agreed upon. If any indicated or actual delays arise, the Using Agency designated to receive the merchandise must be notified immediately and the cause for such delay stated. If any goods or services are not delivered within the time specified on any purchase order, or within a reasonable time if no time is specified, the Using Agency may refuse to accept such goods and the Indiana Department of Administration Procurement Division may cancel the agreement. The Lessor/Contractor shall make no deliveries on verbal orders except from the Using Agency on purchases less than \$5,000 and only with written approval on purchases greater than \$5,000 from the Indiana Department of Administration Procurement Division.
22. **Prices:** Prices listed for each item are firm and cannot be changed without the written consent of the Director of the Indiana Department of Administration Procurement Division. Any upward revision in price may be rejected at the discretion of the Director of the Procurement Division and may result in cancellation of the Purchase Order without recourse on the part of the Lessor/Contractor.
23. **Warranty:** The Lessor/Contractor will furnish all parts and maintenance at no charge for a period of at least ninety (90) days or the manufacturer's standard warranty, whichever is longer, beginning on the first day after acceptance by the Using Agency, provided that such maintenance and parts are not required because of accident, neglect, misuse, failure of electrical power or air-conditioning humidity control, or causes other than ordinary use. Any such service required as a result of erroneous site preparation specification furnished by the Lessor/Contractor or otherwise required due to the fault or negligence of the Lessor/Contractor shall also be provided by the Lessor/Contractor at no additional charge. All replaced parts shall become the property of the Lessor/Contractor. Prior to the expiration of the warranty period, whenever equipment is shipped for a mechanical replacement purpose, the Lessor/Contractor shall bear all cost of such shipment including, but not limited to, cost of packing, transportation, rigging, drayage, and insurance. The warranty shall apply to the replacement machine beginning on the first day following delivery of the replacement machine to the Using Agency.
24. **Insurance:** If this agreement provides for work to be performed by the Lessor/Contractor on property owned or controlled by the State of Indiana, or on property of others named herein, Lessor/Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Lessor/Contractor's employees.

If required by contract, the Lessor/Contractor shall furnish to the Indiana Department of Administration Procurement Division, upon request, a written certificate obtained from an approved insurance company or proper governmental authority establishing that said insurance of employees has been procured and that premiums therefore have been paid and specifying the name of the insurer and the policy number and expiration dates.
25. **Force Majeure:** In the event that either party is unable to perform any of its obligations under this contract – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.
26. **Governing Laws:** This contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
27. **Work Standards:** The Lessor/Contractor agrees to execute its respective responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product or the working relationship with those individuals assigned to work on this Contract, the State may request the replacement of any or all such individuals.
28. **Contract Confidentiality of State Information:** The Lessor/Contractor understands and agrees that data, materials, and information disclosed to Lessor/Contractor may contain confidential and protected data; therefore, the Lessor/Contractor promises and assures that data, material, and information gathered, based upon, or disclosed to the Lessor/Contractor for the purpose of this contract will not be disclosed to others or discussed with other parties without the prior written consent of the State.
29. **Confidentiality of Data, Property Rights in Products, and Copyright Prohibition:** The Lessor/Contractor further agrees that all information, data, findings, recommendations, proposals, etc., by whatever name described and by whatever form therein secured, developed, written, or produced by the Lessor/Contractor in furtherance of this Contract, shall be the property of the State and that the Lessor/Contractor shall take such action as is necessary under law to preserve such property rights in and of the State while such property is within the control and/or custody of the Lessor/Contractor. By this contract the Lessor/Contractor specifically waives and/or releases to the State any cognizable property right in the Lessor/Contractor to copyright or patent such information, data, findings, recommendations, proposals, etc.
30. **Ownership of Documents and Materials:** All documents, records, programs, data, film, tape, articles, memos, and other materials developed under this contract will be the property of the State of Indiana. Use of these materials other than related to contract performance by the Lessor/Contractor without prior written consent of the State is prohibited. During the performance of the services specified, the Lessor/Contractor shall be responsible for any loss or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while they are in the possession of the Lessor/Contractor and any loss or damage thereto shall be restored at the Lessor/Contractor's expense. Full, immediate, and unrestricted access to the work product of the Lessor/Contractor during the term of this contract shall be available to the State.
31. **Progress Reports:** The Lessor/Contractor will submit a progress report to the State upon request. The report will be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress report shall serve the purpose of assuring the State that work is progressing in line with the schedule and the completion can be reasonably assured on the scheduled date.
32. **Access to Records:** The Lessor/Contractor and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract, for inspection by the State or by any other authorized representative of the State Government and copies thereof shall be furnished at no cost to the State if requested.
33. **Substantial Performance:** This contract shall be deemed to have been substantially performed only when fully performed according to its terms and

35. Year 2000 Compliant: Any and all Technology Products supplied by the Lessor/Contractor will be Year 2000 Compliant. "Year 2000 Compliant" means that the information technology will accurately process date and time data from, into, and between the 20th and 21st centuries, the year 1999 and 2000, and for all leap years. "Process Data and Time Data" includes, but is not limited to, date calculations, logical functions, program branching, format conversion edits and validations, and the use of dates in comparisons, sorting, sequencing, merging, retrieving, searching, and indexing. Furthermore, Year 2000 Compliant information technology, when used in combination with other information technology, shall accurately process date and time data if the other technology properly exchanges date and time data with it.
36. Year 2000 -- Suppliers: All Lessor/Contractors who are suppliers of any and all goods and services contracted by the State of Indiana will be Year 2000 Compliant. "Year 2000 Compliant" means that they can continue their business operations and will accurately process date and time data from, into, and between the 20th and 21st centuries, the year 1999 and 2000, and for all leap years. "Process Data and Time Data" includes, but is not limited to, date calculations, logical functions, program branching, format conversion, edits and validations, and the use of dates in comparisons, sorting, sequencing, merging, retrieving, searching, and indexing. Furthermore, Year 2000 Compliant, when used in combination with Lessor/Contractor's other date-required interfaces, shall accurately process date and time data passed to or received from Lessor/Contractor's other customers/suppliers and properly exchanges date and time data with them.
37. Conflict of Interest:
- A. As used in this section:
 - "Immediate family" means the spouse and the unemancipated children of an individual.
 - "Interested party" means:
 1. The individual executing this Contract;
 2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
 3. Any member of the immediate family of an individual specified under subdivision 1 or 2.
 - "Department" means the Indiana Department of Administration.
 - "Commission" means the State Ethics Commission.
 - B. The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.
 - C. The Department will not exercise its right of cancellation under section B above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.
 - D. Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

THIS TERM AND CONDITION ONLY APPLIES TO TRASH SERVICES

1. Landfill and/or Incinerator Clause 25 IAC 1.1-1-17

The rate for Solid Waste Removal Services set out herein shall be composed of two components:

- A. The fee charged by the Lessor/Contractor for services in provisions of containers and removal and hauling of the waste;
- B. The pass-through of any landfill or incinerator charges incurred by Lessor/Contractor. The Lessor/Contractor's fee shall remain fixed for the full term of the contract. However, upon presentation of written verification that the landfill or incinerator operator has increased or decreased the landfill or incinerator charges, the landfill or incinerator charge component of the contract will be increased or decreased to match the new landfill or incinerator charge.

Incinerator: Written verification from the incinerator on incinerator letterhead stating the specific amount per ton of the increase or decrease.
 Landfill: Written verification from the landfill on landfill letterhead stating the specific amount per cubic yard of the increase or decrease. The above written verifications must be submitted with a letter from the Lessor/Contractor to the Using Agency.

THESE TERMS AND CONDITIONS APPLY TO THE LEASE TO PURCHASE AND/OR RENTAL OF ANY TYPE OF EQUIPMENT

1. Initial Condition of Equipment: Any equipment leased hereunder shall be new unless otherwise stated.
2. Installation:
 - A. The Lessor/Contractor shall install the equipment described herein ready for use by the commencement date of the term as specified in the solicitation as agreed to prior to the commencement date by the Using Agency.
 - B. The commencement date of the term may be postponed by mutual consent and written notice to the Lessor/Contractor, the Using Agency, and the Indiana Department of Administration.
 - C. The Lessor/Contractor shall install the equipment described herein ready for use by the commencement date of the term as specified in the solicitation as agreed to prior to the commencement date by the Using Agency.
 - D. The commencement date of the term may be postponed by mutual consent and written notice to the Lessor/Contractor, the Using Agency, and the Indiana Department of Administration.
 - E. The Using Agency agrees to have the site prepared in accordance with the Lessor/Contractor's written minimum site and environmental requirements. Such requirements have been provided in writing to the Using Agency or the Indiana Department of Administration by Lessor/Contractor prior to the execution of this Agreement.
 - F. Installation shall be performed in a professional and workmanlike manner and conform to all recommendations of the manufacturer and good construction and engineering practices.
 - E. During the period of installation, the facilities may be in use by the Using Agency. The Lessor/Contractor shall schedule and coordinate the work with the Using Agency to cause the least possible interruption of the Using Agency's activities in and around the facilities. It is intended that work be performed during normal working hours of the Using Agency, unless the Using Agency directs otherwise in writing prior to the commencement date.
3. Acceptance of Equipment: Following the delivery and installation of the equipment described herein and the Lessor/Contractor's certification that the equipment has been successfully installed and is ready for use, the Using Agency shall immediately inspect the same and shall provide written acceptance of such equipment within ten (10) business days following the Lessor/Contractor's certification of the equipment being ready for use. The failure of the Using Agency to issue written acceptance within such ten (10) day period shall not constitute acceptance. The Lessor/Contractor may, upon the failure of the Using Agency to issue timely acceptance, demand a written acceptance and Using Agency will be deemed to have accepted the equipment if it has not accepted or rejected the equipment within ten (10) days receipt of the Lessor/Contractor's written demand for acceptance.

If the equipment fails to conform to the requirements of this contract including, but not limited to, the specifications of the original solicitation packaged and the representations contained in the bid of the Lessor/Contractor, the equipment may be rejected.

4. Maintenance of Equipment:

- A. The Lessor/Contractor shall keep the equipment in good operating condition. For this purpose, the Lessor/Contractor shall have full and free access to the security policies and procedures of the Using Agency. Maintenance of equipment shall be provided on an "on call" basis. Lessor/Contractor must respond within twenty-four (24) hours of service call placement unless otherwise stated in the original solicitation package.
- B. Upon request, the Lessor/Contractor shall specify the preventive maintenance schedule required for the equipment. The Using Agency will allow the Lessor/Contractor time for preventive maintenance. Preventive maintenance will normally be performed at a time mutually agreed to by the Using Agency and the Lessor/Contractor.
- C. All remedial maintenance will be performed promptly after notification of malfunction. Lessor/Contractor shall provide the Using Agency with a designated person or place to contact and shall make arrangements to enable its maintenance personnel or representatives to receive such notification promptly. Should a specific response time be required, either in the specifications listed in the solicitation or in the form of an addendum to the agreement, the Lessor/Contractor shall respond within said period.
- D. There will be no charge for travel expenses associated with maintenance service under this agreement.
- E. The Using Agency agrees to pay, at Lessor/Contractor's applicable time and material rate then in effect, all charges for parts, maintenance and other service activities caused by: (1) misuse, (2) alterations, and (3) attachments.
- F. There will be no extra charge for replacement parts, except as provided in paragraph E above.
- G. Lessor/Contractor's obligation to maintain the equipment under this lease shall terminate upon exercise by the State of its purchase option. Lessor/Contractor shall thereafter be obligated to offer maintenance services to the State at Lessor/Contractor's standard prices for a period of not less than four (4) years.

5. Possession and Enjoyment: Lessor/Contractor hereby covenants to provide the State during the term of this Lease with the quiet use and enjoyment of the equipment, and the State shall, during the term of the Lease, peacefully and quietly have and hold and enjoy the equipment, without suit, trouble, or hindrance, except as expressly set forth in this Lease.

THIS TERM AND CONDITION ONLY APPLIES TO A LEASE PURCHASE AGREEMENT/LEASE TO OWN

1. Title:

- A. Title to the equipment will pass to the State upon notification to the Lessor/Contractor of the State's intent to exercise its purchase option.
- B. When the State exercises any option to purchase granted under the original solicitation, Lease payments shall cease when the State gives the Lessor/Contractor notice of its exercise of the option.

The Purchase option(s) are as follows:

THIS TERM AND CONDITION APPLIES TO ALL QUANTITY PURCHASE AGREEMENT, LEASE PURCHASES, RENTALS, AND SERVICES

- 1. Renewal Option: This agreement may be renewed upon the same terms and conditions contained herein. Such renewal is subject to the approval of the Commissioner of the Indiana Department of Administration and the State Budget Director (except Quantity Purchase Agreements) and compliance with IC 5-22-17-4. The total term of this contract, including all renewals, shall not exceed four (4) years.
- 2. Attorney General Approval: This Agreement has been approved by the Indiana Attorney General by letter dated January 14, 2000 as a form agreement (subject to completion of the blank spaces with appropriate information and proper execution) under Indiana Code 4-13-2-14.3(e). This Agreement is void if any changes are made without proper written approval of the Indiana Attorney General

SF4391(R4-97)

NON-COLLUSION CERTIFICATION

This is to certify that the Bidder, being duly affirmed under oath says, that he or she is the contracting party; that he or she has not, nor has any other employee of the company represented by him or her, directly or indirectly, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he or she has not received or paid, any sum of money or other consideration for the execution of the annexed contract other than that which appears upon the face of the contract.

DRUG-FREE WORKPLACE CERTIFICATION

This is to certify that the Bidder will provide a drug-free workplace required by Executive Order No. 90-5, and affirms under penalties of perjury, that he or she is authorized to execute this certification.

SIGNATURE

This is to certify that the bidder or any person on his or her behalf has examined and understands the specifications, including General and Special conditions of this document.

BIDDER LIQUI-BOX CORPORATION FEDERAL ID NUMBER 31-0628033ADDRESS 6950 WORTHINGTON - GALENA RD.CITY WORTHINGTON STATE OH ZIP CODE 43085

TELEPHONE NUMBER ()

If awarded a contract, the bidder will provide supplies, equipment, and/or services to the State of Indiana in accordance with the general conditions, specifications, certifications and other documents of this solicitation.

I, [Signature], the undersigned SALES MANAGER
(Signature) (Print Office Held)

of the above named bidder under penalties of perjury this 19th day of December, 2003, certify that I hold the aforementioned Office in the above bidder and that the representations are true and accurate.

EXCEPTIONS

☒ PLEASE CHECK IF APPLICABLE

Alternative requests must be equal or better than those specified as determined by the Indiana Department of Administration, and bidders deviating from specified items should provide, with his or her request, a listing of all areas in which his or her product deviates and fully explain and justify this alternative.

ANY EXCEPTIONS ARE TO BE NOTED BELOW AND LISTED BY LINE ITEM NUMBER.

- OUR BID INCLUDES AN IS-7M FILLER & MCP240 PACKER, THAT IS ALREADY INSTALLED AT PEN PRODUCTS.
- A SEPARATE BID WAS SUBMITTED THAT INCLUDES NEW EQUIPMENT TO BE INSTALLED AT PEN PRODUCTS.
- THE IS-7M FILLER & MCP240 PACKER IS OWNED BY LIQUI-BOX CORPORATION, A SUBSIDIARY OF E. I. DUPONT. WE WERE FORMALLY CALLED DUPONT CANADA, ON THE PREVIOUS BID THAT WE WERE AWARDED.

SF47895 (ELEC4-97)

MINORITY AND WOMEN'S BUSINESS ENTERPRISE PARTICIPATION PLAN

An offeror is expected to submit in each response a Minority Business Enterprise Participation Plan in accordance with 25 IAC 5 and IC 4-13-16.5. In the Plan, the offeror must show that there are racial minorities and woman owned enterprises participating in the proposed contract. While the participation may be as a subcontractor, second tier participation with common suppliers (e.g., office suppliers, courier services) is acceptable. Respondents must indicate the name of the racial minority owned firm(s) with which it will work; the contact name and phone number at the firm(s); the service supplied by the firm(s); and the specific dollar amount from this contract that will be directed toward each firm. If the goal for this solicitation cannot be directed toward racial minority or woman owned enterprises, the respondent may demonstrate that a minimum of an amount equal to the goal of overall annual proceeds from all business) are directed to racial and woman owned enterprises. Please note: If the Trade is an overhead item for your entire business, please calculate the proportion of the business that will actually apply to the solicitation in question.

Failure to provide the Plan at the time of bid submission may result in the disqualification and rejection of the offer. The Indiana Department of Administration reserves the right to verify all information included in the Minority and Women Business Enterprise Participation Plan before making final determination of the offeror's responsiveness and responsibility.

An offeror may submit an application for a program waiver if the indicated goal or no participation is met. The offeror should demonstrate a good faith effort to meet the goal for example by working with the Minority and Women Business Development office of the Indiana Department of Administration to design a plan to meet the goal in an acceptable time period. Should those efforts not produce the goal, the waiver application may be submitted with documentation of the good faith effort. The State reserves the right to accept, verify or deny any application for waiver from the contract goal.

By submission of the offer, the offeror thereby acknowledges and agrees to be bound by the regulatory processes involving the State of Indiana's Minority Business Enterprise Program. Questions involving the regulations governing the Minority and Women Business Enterprise Participation Plan and/or the application for relief from the goal should be directed to the Compliance Manager of the Minority and Women's Business Enterprise Development office at 317/233-6607.

MBE/WBE PARTICIPATION PLAN

BID/REQ # ASA4-4-26 DUE DATE DEC 29 2003
 BID/REQ NAME ILLDPE POLYOLEFIN MILK & JUICE PACKAGING
 OFFEROR LIQUI-BOX CORPORATION
 ADDRESS 6950 WORTHINGTON-GALENA ROAD
 CITY/STATE/ZIP WORTHINGTON, OH 43085
 PHONE() 800 263-2742 ext 7185

The following minority owned firms will be participating in the Bid/Req. according to the following schedule:

<u>MBE/WBE</u>	<u>PHONE</u>	<u>CONTACT</u>	<u>TRADE</u>	<u>AMOUNT</u>
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<u>WE ARE A SUBSIDIARY OF E.I. DUPONT DE NEMOURS</u> <u>AND COMPANY. E.I. DUPONT DOES NOT HAVE A</u> <u>SPECIFIC MBE PLAN FOR EACH CONTRACT.</u> <u>OUR SUBCONTRACTING PLAN (SF295) IS SUBMITTED</u> <u>TO THE FEDERAL GOVERNMENT ANNUALLY.</u> <u>ATTACHED IS THE 2003 PLAN.</u>				
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*If additional room is necessary, please attach a separate page

THIS DOCUMENT MUST BE INCLUDED IN YOUR BID/PROPOSAL

Application for MBE/WBE Program Waiver is hereby submitted for the Bid/Req. listed below.

Please indicate reason(s) for application below:

Please indicate MBE/WBE firms contacted below:

*If additional room is necessary, please attach a separate page

Dec 19/03
DATE

THIS DOCUMENT MUST BE INCLUDED IN YOUR BID/PROPOSAL